

N.D.A.G. Letter to Marion (April 7, 1989)

April 7, 1989

Mr. James L. Marion
Chief Parole Office
North Dakota Department
of Parole and Probation
P.O. Box 5521
Bismarck, ND 58502

Dear Mr. Marion:

Thank you for your March 22, 1989, letter concerning application of N.D.C.C. §§ 12-54.1-01 and 12-59-05 to persons received at the Penitentiary or State Farm by order of a district court when the incarceration was imposed pursuant to a deferred imposition of sentence. You state that these persons have received a three-year deferred imposition of sentence with a condition that one year be served at the Penitentiary.

You have first inquired whether an inmate the Penitentiary received pursuant to a deferred imposition of sentence order is eligible for a parole hearing under N.D.C.C. § 12-59-05. That section provides:

12-59-05. Consideration by board -- Guarantee. At a meeting to be determined by the parole board, within one year after a prisoner's admission to the penitentiary, or within six months after the prisoner's admission to the state farm, at such intervals thereafter as it may determine and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. The board shall consider all pertinent information regarding each prisoner, including the circumstances of the offense, the presentence report, the previous social history and criminal record, the conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made.

This section does not make the hearing before the parole board contingent upon the receipt of a "sentence" by the inmate. Any person admitted to the State Penitentiary or State Farm is entitled to make application for parole at a meeting of the Parole Board within the statutory time limits after the inmate's admission to the appropriate correctional facility. Once an inmate has been admitted to the State Penitentiary or State Farm, whether pursuant to a judgment imposing sentence or an order deferring imposition of sentence, that inmate is entitled to consideration of parole by the Parole Board as required by N.D.C.C. § 12-59-05.

You have also inquired whether the reduction for good time pursuant to N.D.C.C. §

12-54.1-01 will be computed on the basis of the one-year term that inmate will be serving at the Penitentiary as a condition of the deferred imposition of sentence or whether the good time will be computed upon the entire three-year period that the inmate will be subject to the deferred imposition of sentence order. You also ask whether a "condition" and a "sentence" are the same for purposes of the good time computation.

N.D.C.C. § 12-54.1-01 authorizes good conduct sentence reductions for offenders sentenced to the Penitentiary or State Farm. A sentence of three months but less than one year permits a five day per month reduction of sentence. The reduction amount increases as the term of sentence increases.

The purpose and basis for good conduct sentence reductions is set forth in N.D.C.C. § 12-54.1-02. These good conduct sentence reductions reward an inmate for compliance with institutional rules and cooperation in performing assigned jobs. These reductions encourage good behavior by inmates of the Penitentiary and State Farm.

As correctly noted in your letter, the good conduct sentence reduction applies to offenders "sentenced" to the Penitentiary or State Farm. If an offender is required to serve a period of incarceration as a part of a sentence to probation imposed pursuant to N.D.C.C. § 12-1-32-02, a sentence has been imposed and the offender would clearly be within the provisions of N.D.C.C. § 12-54.1-01. In addition, if the court would impose a three year sentence and suspend all but one year of that sentence, the offender would also be sentenced to serve the one year incarceration and be permitted to benefit from the good conduct sentence reductions.

However, an order deferring or suspending imposition of sentence pursuant to N.D.C.C. § 12-53-13 does not involve the imposition of a "sentence." This section does not, however, prohibit a court from requiring a person to serve a period of incarceration as a condition of probation since the court may impose "such terms and conditions as it may determine."

Based upon my review of the relevant North Dakota law and the legislative intent pertaining to good conduct sentence reductions, it is my conclusion that the good conduct sentence reductions of N.D.C.C. § 12-54.1-01 apply to persons admitted to the Penitentiary or State Farm as a condition of an order deferring imposition of sentence.

Sincerely,

Nicholas J. Spaeth

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